

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-029

IN THE MATTER OF :
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:
ROSCOE L. LAMB, :
:
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: March 21, 1990

Decided: October 23, 1990

Thomas J. McCormick appeared on behalf of the Office of Attorney Ethics.

Raymond P. Vivino appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter is before the Board based on a presentment filed by the District IIA Ethics Committee.

Respondent was admitted to the New Jersey bar in 1962. He is engaged in the practice of law in Ridgewood, New Jersey. Although respondent practiced under the name of a partnership at the time relevant to this matter, this arrangement was limited to sharing office space with another attorney. Respondent maintained his own separate trust and business accounts.

Late in 1985, respondent's books and records were the subject of a random audit conducted by the Office of Attorney Ethics (OAE). Following an audit visitation by the OAE auditor, it was determined that, as a result of respondent's deficient recordkeeping

procedures and the lack of original bank records, it was necessary to reconstruct the activity in respondent's trust and business accounts. Because of the extensive task that the reconstruction entailed, the OAE retained an independent auditor, William J. Morrison, C.P.A., to complete the random audit. Mr. Morrison's analysis covered the period from January 1, 1984 through December 31, 1985. The auditors' reports (Exhibits C-1A and C-1B) disclosed numerous recordkeeping deficiencies and trust and business accounts improprieties as follows:

1. Respondent failed to keep cash receipts and disbursements journals for both his trust and business accounts, in violation of R.1:21-6(b)(1);
2. Respondent failed to maintain a client ledger book, cards, or sheets, in violation of R.1:21-6(b)(2);
3. Respondent failed to follow generally accepted accounting procedures, in violation of R.1:21-6(c), in that trust account deposit slips did not identify the funds belonging to each client;
4. During the months of September and October 1984, respondent used his business account as his trust account, depositing client trust funds therein and making disbursements therefrom, in violation of R.1:21-6(a)(1);
5. Throughout the audit period, January 1984 through December 1985, respondent disbursed a total of \$9,210 in earned fees from the trust account, by issuing checks made payable to "cash" or to himself without first depositing those funds in

his business account and thereafter making disbursements therefrom;

6. Respondent disbursed funds from the trust account without allowing for a delay of several days for the corresponding deposit to clear through the banking system;
7. Respondent disbursed trust funds prior to the deposit of client monies into the trust account, thereby causing other clients' funds to be invaded or the entire trust account to be temporarily overdrawn;
8. Respondent issued trust account checks, payable to "cash" or to himself, representing an approximate amount of fees earned, without first making a precise allocation of the fees to the respective client. Subsequently, respondent would select the client against whom to apply the fee previously disbursed to himself:

As a result of the latter three improper practices (numbers 6, 7, and 8 above), respondent's trust account was out-of-trust or overdrawn on two occasions. Specifically, (a) a \$14,626.55 trust account overdraft occurred on September 11, 1985 because respondent did not wait for \$15,000 in funds deposited on August 23, 1985 to clear before making disbursements thereon; and (b) respondent was out-of-trust by \$1,701.42 for twenty days between February 14 and March 6, 1985, because he overdisbursed fees to himself, thus invading \$2,054.16 being held in trust for the estate of M. Roberto.

Respondent admitted that he did not maintain cash receipts and disbursements journals for either his trust or business account, that he did not keep a client ledger book, cards or sheets, and that he failed to maintain his records in accordance with generally accepted accounting practice. He testified that, since the audit of his records, he has complied with the requirements in this regard. Respondent also admitted that he improperly used his business account as his trust account during September and October 1984. He explained, however, that he had run out of money at checks for those two months, and, therefore, used his business account as his trust account in order to avoid delay in transmitting settlement funds to his clients. Similarly, respondent conceded having disbursed \$9,210 in legal fees to himself without first depositing them in his business account, but assured the hearing panel that he had discontinued this improper practice.

With regard to the \$14,626.55 trust account overdraft on September 11, 1985, respondent explained that a \$15,000 check had been inadvertently deposited without the proper endorsement; the overdraft occurred when the check was returned for the appropriate endorsement.

Lastly, respondent admitted that he was out-of-trust by \$1,701.42 between February 14 and March 6, 1985, but explained that he had overlooked the obligation to pay a co-counsel fee to another attorney and, instead, disbursed it to himself; this error was

later corrected when future fees accruing to respondent were paid to that attorney.

Respondent denied the allegation in the complaint that he was out-of-trust in amounts ranging from \$13,467.47 to \$15,370.45 between April 23 and April 30, 1985 because he had made premature disbursement of funds that were not deposited until May 7, 1985. Respondent explained that, although the disbursement checks were dated April 23, 1985, they were not released to the client and to the other payees until after May 7, 1985, the date of the deposit of the settlement check in his trust account.

At the conclusion of the district ethics committee hearing, the panel found that the recordkeeping deficiencies alleged in the complaint had been proven by clear and convincing evidence. The panel also found that, on two occasions, respondent had been guilty of negligent misappropriation of client funds as a result of respondent's lack of adequate records, his practice of leaving earned fees in the trust account and then withdrawing them in a random manner, and his practice of disbursing settlement awards and other payments before the deposit check cleared. More specifically, respondent was out-of-trust by \$1,701.42 between February 14 and March 6, 1985, as a result of which client trust funds in the amount of \$2,054.16 were invaded. In addition, a trust account overdraft of \$14,626.55 occurred on September 11, 1985 because respondent disbursed funds prior to the deposit of a \$15,000 check, which had not been properly endorsed.

The panel further found that the proofs did not clearly and convincingly establish that respondent was out-of-trust in amounts ranging from \$13,467.47 to \$15,370.45, between April 23 and April 30, 1985. As stated in the panel report,

[a]t the time of the audit it may have appeared to the auditor that there had been an out-of-trust situation arising from checks that were dated April 23, 1985 drawn against funds that were not deposited until May 7, 1985. The uncontradicted testimony of the Respondent, which the Panel finds to be credible, was that the checks, although dated earlier, were not actually issued to the persons entitled thereto until after the date of the deposit.

[panel report at 6.]

The panel concluded that there was no evidence of knowing misappropriation. At the Board hearing, the presenter agreed with this conclusion.

The panel recommended that respondent receive public discipline, tempered by several mitigating factors: (1) respondent has enjoyed a long, unblemished professional record; (2) no client was harmed by respondent's actions; and (3) at the ethics hearing, respondent expressed understanding of the requirements of the recordkeeping rules and his current compliance therewith.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the full record, the Board is satisfied that the conclusions of the committee in finding

respondent guilty of unethical conduct are fully supported by clear and convincing evidence.

There is no factual dispute as to the charges in the ethics complaint, with the exception of the alleged negligent misappropriation of funds ranging from \$13,467.47 to \$15,370.45 between April 23 and April 30, 1985. Respondent conceded that he had not complied with the recordkeeping provisions of R.1:21-6. Respondent also admitted that he had improperly used his business account as a trust account for a period of two months. In addition, respondent conceded that, on two occasions, he was out-of-trust because of the return of a check that had not been properly endorsed and because of the inadvertent invasion of client funds in the Roberts matter caused by an overpayment to himself of a legal fee.

The Board agrees with the committee that respondent's invasion of trust funds was negligent, not knowing, and the result of respondent's poor recordkeeping procedures and his improper practice of leaving earned fees in the trust account and thereafter withdrawing them in a random fashion. To respondent's credit, he promptly remedied the bookkeeping deficiencies to comply with the mandate of R.1:21-6. Inadequate recordkeeping, nevertheless, is a serious act of misconduct. Matter of Fucetola, 101 N.J. 5,9 (1985). In that case, the attorney acknowledged that his recordkeeping was inadequate, as a result of which his trust account was overdrawn at various times. This improper bookkeeping practice, coupled with issuing trust account checks against

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an untarnished reputation for twenty-two years prior to his ethical transgressions.

The Board is mindful that, in setting the appropriate discipline for attorney misconduct, the Supreme Court's interest is not in punishing the attorney, but in protecting the public against members of the bar who are unworthy of the trust and confidence essential between attorney and client. Matter of Addonizio, 95 N.J. 121 (1984). Accordingly, upon consideration of the relevant facts, the Board unanimously recommends that respondent receive a public reprimand.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs, including \$10,189.75 for what the Board determined to be reasonable and fair audit costs out of the total costs charged by the auditor \$16,563. One member would have reduced the audit costs to \$7,500.

Dated: 10/27/80

By: Raymond R. Trombadore

Raymond R. Trombadore
Chair
Disciplinary Review Board